

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

**SESSION LAW 2014-90  
HOUSE BILL 201**

AN ACT TO AMEND THE APPLICABILITY OF THE ENERGY CONSERVATION CODE TO CERTAIN EXISTING NONRESIDENTIAL BUILDINGS, TO CLARIFY STORMWATER PROGRAM IMPERVIOUS SURFACE CALCULATIONS FOR REDEVELOPMENT, TO CREATE AN EXEMPTION FROM THE NORTH CAROLINA ENVIRONMENTAL PROTECTION ACT FOR THE REOCCUPATION OF AN EXISTING BUILDING OR FACILITY, AND TO AMEND THE STATUTE GOVERNING THE DEPARTMENT OF COMMERCE RURAL ECONOMIC DEVELOPMENT DIVISION.

The General Assembly of North Carolina enacts:

**PART I. APPLICABILITY OF THE ENERGY CONSERVATION CODE TO CERTAIN EXISTING NONRESIDENTIAL BUILDINGS**

**SECTION 1.** G.S. 143-138 is amended by adding a new subsection to read:

"(b15) Exclusion from Energy Code Requirements for Existing Commercial Buildings. – The alteration of commercial buildings and structures that received a certificate of occupancy prior to January 1, 2012, may be subject to the rules pertaining to energy efficiency and energy conservation that were in effect on December 31, 2011. The addition to commercial buildings and structures that received a certificate of occupancy prior to January 1, 2012, may be subject to the rules pertaining to energy efficiency and energy conservation that were in effect on December 31, 2011, so long as the addition does not increase the building area of the existing commercial building or structure to more than one hundred fifty percent (150%) of the building area of the commercial building or structure as it was in existence on December 31, 2011. For the purpose of this subsection, the term "commercial buildings and structures" shall include all structures and buildings that are not classified as a Group R occupancy by the Building Code Council."

**PART II. STORMWATER PROGRAM IMPERVIOUS SURFACE CALCULATIONS FOR REDEVELOPMENT**

**SECTION 2.** G.S. 143-214.7 reads as rewritten:

**"§ 143-214.7. Stormwater runoff rules and programs.**

(a) Policy, Purpose and Intent. – The Commission shall undertake a continuing planning process to develop and adopt a statewide plan with regard to establishing and enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the purpose and intent of this section that, in developing stormwater runoff rules and programs, the Commission may utilize stormwater rules established by the Commission to protect classified shellfish waters, water supply watersheds, and outstanding resource waters; and to control stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the intent of this section that the Commission phase in the stormwater rules on a priority basis for all sources of pollution to the water. The plan shall be applied evenhandedly throughout the State to address the State's water quality needs. The Commission shall continually monitor water quality in the State and shall revise stormwater runoff rules as necessary to protect water quality. As necessary, the stormwater rules shall be modified to comply with federal regulations.

(a1) Definitions. – The following definitions apply in this section:

(1) Development. – Any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation



into the subsoil. When additional development occurs at a site that has existing development, the built-upon area of the existing development shall not be included in the density calculations for additional stormwater control requirements, and stormwater control requirements cannot be applied retroactively to existing development, unless otherwise required by federal law.

(2) Redevelopment. – Any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control to that of the previous development.

(b) The Commission shall implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards and best management practices for the protection of the State's water resources in the following order of priority:

- (1) Classified shellfish waters.
- (2) Water supply watersheds.
- (3) Outstanding resource waters.
- (4) High quality waters.
- (5) All other waters of the State to the extent that the Commission finds control of stormwater is needed to meet the purposes of this Article.

(b1) The Commission shall develop model practices for incorporation of stormwater capture and reuse into stormwater management programs and shall make information on those model practices available to State agencies and local governments.

(b2) For purposes of implementing stormwater programs, "built-upon area" means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or gravel.

(b3) Stormwater runoff rules and programs shall not require private property owners to install new or increased stormwater controls for (i) preexisting development or (ii) redevelopment activities that do not remove or decrease existing stormwater controls.

...."

**SECTION 3.** Section 2 of S.L. 2006-246, as amended by Section 51(b) of S.L. 2013-413, reads as rewritten:

**"SECTION 2.** Definitions. – The following definitions apply to this act and its implementation:

- (1) The definitions set out in 40 Code of Federal Regulations § 122.2 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003 Edition).
- (2) The definitions set out in ~~G.S. 143-212 and G.S. 143-213.~~G.S. 143-212, G.S. 143-213, and G.S. 143-214.7(a1).
- (3) The definitions set out in 15A NCAC 2H .0103 (Definitions of Terms).
- (4) The definitions set out in 15A NCAC 2H .1002 (~~Definitions~~), ~~except for the definitions of "Built-upon area", "Development", and "Redevelopment", which are defined below.~~(Definitions).
- (5) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.
- (6) "BMP" means Best Management Practice.
- (7) Repealed by Session Laws 2013-413, s. 51.(b), effective August 23, 2013.
- (8) ~~"Development" means any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.~~
- (9) "Division" means the Division of Water Quality in the Department.
- (10) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by Article 19 of Chapter 160A of the General Statutes, or a county may exercise the powers authorized by Article 18 of Chapter 153A of the General Statutes.
- (11) "Public entity" means the United States; the State; a city, village, township, county, school district, public college or university, or single-purpose

- governmental agency; or any other governing body that is created by federal or State law.
- (12) ~~"Redevelopment" means any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development.~~
- (13) "Regulated entity" means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).
- (14) "Sensitive receiving waters" means any of the following:
- a. Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient-sensitive waters in accordance with subsections (d) and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures).
  - b. Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. §§ 1531, et seq.), as amended.
  - c. Waters for which the designated use, as described by the classification system set out in subsections (c), (d), and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures), have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. § 1313.
- (15) "Shellfish resource waters" means Class SA waters that contain an average concentration of 500 parts per million of natural chloride ion. Average concentration is determined by averaging the chloride concentrations of five water samples taken one-half mile downstream from the project site that are taken on separate days, within one hour of high tide, and not within 48 hours following a rain event. The chloride ion concentrations are to be determined by a State-certified laboratory.
- (16) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be determined pursuant to 15A NCAC 2B .0211 through 15A NCAC 2B .0222 (Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of North Carolina) and 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).
- (17) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant."

### **PART III. SEPA EXEMPTION FOR REOCCUPATION OF AN EXISTING BUILDING OR FACILITY**

**SECTION 4.** G.S. 113A-12 reads as rewritten:

**"§ 113A-12. Environmental document not required in certain cases.**

No environmental document shall be required in connection with:

- ...
- (7) The redevelopment or reoccupation of an existing building or facility, so long as any additions to the existing building or facility do not increase the total footprint to more than one hundred fifty percent (150%) of the footprint of the existing building or facility and so long as any new construction does not increase the total footprint to more than one hundred fifty percent (150%) of the footprint of the existing building or facility."

**SECTION 5.** G.S. 113A-8 reads as rewritten:

**"§ 113A-8. Major development projects.**

(a) The governing bodies of all cities, counties, and towns acting individually, or collectively, may by ordinance require any special-purpose unit of government or private developer of a major development project to submit detailed statements, as defined in G.S. 113A-4(2), of the impact of such projects for consideration by those governing bodies in matters within their jurisdiction. Any such ordinance may not be designed to apply to only a particular major development project, and shall be applied consistently.

(b) Any ordinance adopted pursuant to this section shall exempt those major development projects for which a detailed statement of the environmental impact of the project or a functionally equivalent permitting process is required by federal or State law, regulation, or rule.

(c) Any ordinance adopted pursuant to this section shall establish minimum criteria to be used in determining whether a statement of environmental impact is required. A detailed statement of environmental impact may not be required for a project that does not exceed the minimum criteria and any exceptions to the minimum criteria established by the ordinance."

(d) Any ordinance adopted pursuant to this section shall exempt from its requirements the certain cases for which an environmental document is not required as set forth in G.S. 113A-12."

**PART IV. ALLOW ECONOMICALLY DISADVANTAGED AND RURAL AREAS TO ACCESS REDD BUILDING REUSE FUNDS**

**SECTION 6.** G.S. 143B-472.127(a)(2) reads as rewritten:

"(2) To provide matching grants or loans to local government units ~~located in an economically distressed county~~ either (i) a development tier one or tier two area or (ii) a rural census tract in a development tier three area that will productively reuse ~~or demolish vacant~~ buildings and properties or construct or expand rural health care ~~facilities~~ facilities, with priority given to towns or communities with populations of less than 5,000. The development tier designation of a county shall be determined as provided in G.S. 143B-437.08. For purposes of this section, the term "economically distressed county" has the same meaning as in G.S. 143B-437.01. "rural census tract" means a census tract having a population density of less than 500 people per square mile according to the most recent decennial federal census."

**PART V. COMMISSIONS TO AMEND RULES TO CONFORM WITH THIS ACT**

**SECTION 7.** The Building Code Council, the Environmental Management Commission, the Coastal Management Commission, and the Department of Environment and Natural Resources shall amend their rules to conform with this act.

**PART VI. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

**SECTION 8.** If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

**SECTION 9.** This act is effective when it becomes law.  
In the General Assembly read three times and ratified this the 25<sup>th</sup> day of July, 2014.

s/ Tom Apodaca  
Presiding Officer of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 6:05 p.m. this 30<sup>th</sup> day of July, 2014